

## **BOARD OF ZONING APPEALS**

### **Minutes**

**April 20, 1999**

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 1:30 p.m., on April 20, 1999, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: BICKLEY FOSTER; JOHN ROGERS; FLOYD PITTS; JUANITA SWANN; KEITH ALTER, WERE PRESENT. DOUG MALONE and RANDY PHILLIPS were absent.

The following Planning Department staff members were present: Assistant Secretary, KEITH GOOCH, and Recording Secretary, ROSE SIMMERING.

Also present was J.R. COX, Office of Central Inspection, SHARON DICKGRAFE, Law Department.

**BICKLEY FOSTER:** It is 1:30 p.m. and I will call the meeting of the Wichita Board of Zoning Appeals together for April 20, 1999. We had seven cases today and one has been withdrawn. Case number BZA 25-98, Wichita Residence Associates, they have withdrawn their case so we are now down to six cases. As I understand Keith, they found another site for the sign possibly?

**GOOCH:** The way I understand it yes. I did not get much detail yesterday.

**FOSTER:** Although we do not have many people here today, we do have six cases, so we will try to be as efficient as possible on all of them and not take anymore time than necessary to delay you today. We have got a number of minutes for June 23, 1998, January 26, 1999, and March 23, 1999. I have reviewed them and I have mentioned to Rose that I have about a half of dozen of typo type of correction. She has done an excellent job to get this ready for us. I don't really have any word change other than, just something I would like to correct typing wise. Let's take them one at a time for June 23, 1998.

**1a.** ALTER moved and ROGERS seconded, to approve the June 23, 1998, minutes.

**MOTION CARRIES 5-0.**

**1b.** PITTS moved and SWANN seconded, to approve the January 26, 1999 minutes.

**MOTION CARRIES 5-0.**

- 1c.** ROGER moved and PITTS seconded, to approve the March 23, 1999, minutes.

**MOTION CARRIES 5-0.**

**FOSTER:** I would like to note to J.R. Cox, that by looking at these minutes for June 23, 1998, I am reminded of a case. Mr. Anderson appeared, you remember that case where they had that messy situation up there on 13<sup>th</sup> Street where he was going to expand his computer business while the neighbors were quite concerned about it. Remember this was the one where he put computer harnesses together for cables.

**COX:** The cable company?

**FOSTER:** Yes. Have you had any reason to be by there? Or know about how the project is coming?

**COX:** I do not know about his project. I have not had any reason to look specifically at the project. Some of the neighbors' concerns were turned over to the appropriate people in OCI.

**FOSTER:** So that was followed up on?

**GOOCH:** I drove by there the other day, they look like they have cleared the site and are going to start construction on the new building.

**2. BZA 25-98, FOSTER:** We will begin the cases. For those that are just coming in case BZA 25-98, has been withdrawn. We will begin with case number BZA 8-99.

**3. BZA 8-99 -Poorman Partnership/Poorman's Auto Supply,** pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the required off-street parking spaces from 45 to 25 spaces on property zoned "LI" Limited Industrial and legally described as follows:

Lots 18, 20, 22, 24, 26 and 28, on Douglas Avenue, in Johnson's Sub-division of Lot 25, and 12 8/10 feet of the East side of lot 23 in Mathewson's Addition to the City of Wichita, Sedgwick County, Kansas. And Lot 1 and the 27 feet of Lot 2 on Douglas Avenue in Strong's Sub-division in Mathewson's Addition to the City of Wichita, Sedgwick County, Kansas. And Lot 2, except the West feet thereof; and all of Lots 3 and 4, on Douglas Avenue in Strong's Subdivision in Mathewson's Addition to the City of Wichita, Sedgwick County, Kansas. Generally located North of East Douglas Avenue, between Mathewson and New York Avenue.

**GOOCH:** Presents staff report and slides.

**BACKGROUND:** The applicant operates Poorman's Auto Supply, Inc. located in the west half of the block north of East Douglas Avenue, between Mathewson and New York Avenue. The applicant's have purchased the east half of the block with the intention of demolishing the existing businesses, then redeveloping the site with a new two-story building to house additional parts for Poorman's Auto Supply. Over the years there has been an explosion in the number of parts needed to be stocked by a replacement parts supplier.

Currently the existing Poorman's site has 18 off-site parking spaces - nine in front of the building accessed by East Douglas Avenue and nine spaces accessed off the alley located at the back of the current building. With the purchase of the property to the east, seven additional spaces will be available along the alley, north of the new construction area, for a total of 25 off-street spaces. Under the current code, this expansion will generate a parking requirement for 45 spaces. Warehousing parking is calculated at 1 space per 1,000 square feet for the first 20,000 square feet, plus one space per 500 square feet above 20,000 square feet which results in the need for 23 spaces for the 28,778 square feet of warehouse area proposed. Office and showroom parking is calculated at one space per 250 square feet of area resulting in the need for 22 spaces.

In 1995, the applicant received approval for a reduction in the number of off-street spaces required from 30 to 18 (BZA 4-95).

The applicant indicates they have nine employees. Generally, there are only two to three customers at any one time as most of their sales are wholesale transactions. Parking is permitted along Douglas, New York and Mathewson.

**ADJACENT ZONING AND LAND USE:**

NORTH	"LI", Limited Industrial; auto repair
SOUTH	"LI", Limited Industrial; retail and office
EAST	"LI", Limited Industrial; commercial
WEST	"LI", Limited Industrial; retail commercial

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as the buildings on this site were constructed around 1930 when zoning regulations did not require the same level of off-street parking as is currently required. Even though buildings will be razed and a new one of different configuration will be constructed, there is insufficient area on the site to provide the parking required by the code. The auto parts business has experienced a significant increase in the number of parts that need to be on-hand in order to be a competitive parts supplier. Most of this businesses sales are wholesale.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the off-street parking that will be provided will be sufficient to meet the needs of this business. There is also public parking along Douglas Avenue, New York and

Mathewson. Therefore, there should not be any need for this businesses customers or employees to seek parking on adjacent properties.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as there is not any other land available for purchase. The applicant's have already purchased adjacent businesses and are developing a two-story building.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the amount of parking to be provided should be adequate to meet the needs of the employees and the public. It is in the public's interest for existing businesses to be able to expand and economically competitive.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as an adequate supply of off-street parking will be supplied, which is the purpose of the code. There is public parking on Douglas Avenue and Mathewson.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted, subject to the following conditions:

1. The parking reduction from 45 to 25 spaces shall be installed in substantial conformance with the site plan submitted with this variance request, and shall apply to an auto supply business employing less than 14 employees.
2. The parking area shall be paved, striped and maintained in accordance with approved site plan within three months of the approval of this request.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any or the foregoing conditions.

**GOOCH:** Are there any questions for staff?

**FOSTER:** Keith, you mentioned this variance case in 1995, is this on the same property?

**GOOCH:** It is on the western half of this area. You can barely make it out on the slide.

**FOSTER:** The two are not related so to speak?

**GOOCH:** So to speak, yes.

**FOSTER:** Any questions from the Board to staff?

**PITTS:** Let me clarify that Keith. I believe that on this request for the variance that those two properties are interrelated whereas, they were not in 1995. Isn't that correct?

**GOOCH:** Right. Now they are going to buy the entire area highlighted on this slide. The BZA in 1995 they only had a portion of the area.

**FOSTER:** Any other questions for staff? Thank you Keith. We will call on the applicant than. Will you please give your name and address. I might remind people that there is a sign-in sheet over here and we would like to get addresses and correct names so if you would before you leave or before you speak fill that out it would be helpful.

**TOM POORMAN, 14320 DONEGAL, WICHITA, KS:** We are a fourth generation company. My grandfather started the business in 1929, on Wichita Street which is where Century II is now. In the 1950's they branched over to the east Douglas area. Then in 1966, we renamed the company to Poorman's Auto Supply. It was at 1508 E. Douglas, and then we moved to 1730 E. Douglas, and now we are at 1400 E. Douglas, which is pretty permanent for us. Over the years our business has changed quite a bit. The out of state competition, the Western Auto's, the O'Riely's and The Auto Zone, the big chain guys have forced us to move almost entirely to the wholesale arena. So as a result of that our business has changed dramatically. Parts, as Keith has mentioned, have driven our need to stock parts up dramatically, in fact, over the last fifteen years, we have had to increase the number of SKU'S of parts that we stock over 600 percent. The need to place those on shelves has increased. Four years ago we were granted the one variance when we actually demolished the buildings in the middle of the block and put the building up that you currently saw in the picture. Our proposal is to tear down the two buildings at the end which currently have no parking and when we replace the buildings we will not fill up the entire area. We will leave parking in the back for seven additional spaces which will give us a total of 25. We do not anticipate needing to increase the number of employees. Unfortunately, our business level will not pick up. All that we will be doing is protecting the business level that we have. Most of our merchandise that leaves there either goes to our other remote locations via company trucks, or is shipped out on common carrier. So, we only end up with just a few percentage of our business either being picked up by the public or customers who generally pull up in front anyway. We have been quite happy with the parking we have now. In fact, if you drive by just about anytime you will only see a couple of cars in the parking lot out front. That need should not change whatsoever. I am sure that you know we are kind of in a unique situation because we are a wholesale business, in somewhat of a retail area. Also, as you know that area down there when those buildings were built, parking was not a consideration. We are kind of caught in that trap. Anyway, we think that we will have a real positive effect on the area. We are going to raise two buildings that were built in the 1920's. They are struggling, in fact the building on the end was condemned over a year ago. We had to go in and shore-up the rafters temporarily just so that we could get it by until the renter got out of there. He will be out June 5, 1999, so we will be able to solve that problem. We have received a lot of compliments from the neighbors around there because of what we did the last time and we have had real positive comments about what we are planning

on doing. Last night at the CPO meeting I felt pretty good because they praised us for staying in the downtown area here and trying to improve it and not just move out to the East or West, like so many other businesses have. We intend to bloom where we are planted and intend to stay there. The last thing is the other good thing about doing this is that we are going to put a dock area off-street on the New York side of the building which is the eastside and that will improve the safety aspect of our business quite a bit. We have had to unload trucks on the curve on the westside for many years. We have never felt like that was as safe as it could be. We are pretty excited about that. That is about all that I have to say. I hope that you approve our request. We are a hometown company and we are just trying to compete against the out of state guys and this will help us do it.

**FOSTER:** Mr. Poorman, are you in agreement with the comments of the staff report? Have you had a chance to read it and the recommendations?

**POORMAN:** I do not see any problem. We actually have had up to twelve employees and I think that is what I wrote on the request. They said nine but I do not think that fourteen will ever be a problem. I suppose you could say that we might be concerned about maybe making it fifteen but I don't really anticipate fourteen to be a problem. Right now with twelve employees we are pretty well staffed. We just need double the square footage that we have for that to be a problem. I do not foresee that.

**FOSTER:** Keith, fourteen in number (1) there, isn't that a category that is not specifically related to the number you think that they will have, but isn't it a category in the parking? Is that how the fourteen is arrived at?

**GOOCH:** No. That is a number. That is not a category. That is a number of employees.

**FOSTER:** So that is a number of employees. Do you feel that you could live with fourteen, Mr. Poorman?

**POORMAN:** Yes, I think fourteen will be okay. I mean if I was just asking in fact we talked about that and I probably would ask for fifteen but fourteen, I can live with. I mean if that is, it would be nice if it were fifteen but I can live with that.

**FOSTER:** If it went to fifteen, Keith, what would that change? Make it 26 spaces or something?

**GOOCH:** No, that would just be a difference, I don't think that it would change much. It was just an arbitrary number that staff came up with. We didn't want too many employees on there because it would increase the parking demand that much more.

**POORMAN:** That is logical.

**PITTS:** Since Mr. Poorman you were here about four years ago you have had an opportunity to evaluate whether you made a pertinent request at that time as to the number of customers that you would have there at any one time. Are you comfortable with the recommendations?

**POORMAN:** Yes, I really am. In fact the interesting thing about it is that the parking lot that is out front where we have nine parking places. Generally, what we found is that there would be an average being two parking places used by customers and they were customers of Sun Supply and Summer Pools. That goes away because they are gone out of there. We gave up trying to control that parking a long time ago. The honest truth of the matter is any customers that we have park, they always park on Douglas because it is just closer to the front door. But reality is that we can count on that for now but you can't always count on that in the future so we felt like it was incumbent upon us to not consider that in the proposal really just to look at. To answer your questions, I think we have been in great shape.

**FOSTER:** Any other questions from the members to the applicant? Is there anyone else wishing to speak to this particular case? I see no one wishing to speak. We will confine the discussion to the Board members then. I would like to comment that I do not see any reason not to raise that to fifteen. There is no sense to put him in that position and it does not seem to be a great parking problem. I would recommend changing that to fifteen.

**ALTER:** I agree. It is always better to use the judgement of the owner. I know that staff is always trying to find a correct value. But there is not scientific reason for fourteen to come up. I would rather use the owners number.

**FOSTER:** Any discussion of the Board members?

**GOOCH:** Mr. Foster, could I offer one additional comment? Talking to J.R. Cox, just another condition between number two and three would be BZA 4-95 become null and void, because this is for the entire site now. So the old BZA would be no longer needed.

**FOSTER:** In other words, rather than limiting to the present one it would be the entire site?

**GOOCH:** Yes, 23,800 square feet is for the warehousing on the entire site.

**FOSTER:** Ok, does everyone understand that?

**PITTS:** I understand that I am just questioning the necessity of it Keith. Since this is for a total new package or site. It is not a new site but it is a different site.

**ALTER:** This site encompasses the old site. Take it off the books just for clerical cleanliness. Because otherwise it sits there and it could cause confusion and there is not reason to cause unnecessary confusion.

**FOSTER:** Do I hear a motion then?

**MOTION:** ALTER moves and PITTS seconded that the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report. Now number 1 through 4. With the addition of number four that BZA 4-95 become null and void with the issuance of this resolution and that the language to satisfy stature conditions should be tracked from the secretary's report.

**DICKGRAFE:** Were you going to increase the number employees?

**ALTER:** Increase the number of employees from 14 to 15. I assumed we had all agreed to that. I also move to change the number one condition we want to make the number 14 into number 15 employees.

**MOTION CARRIES 5-0.**

- 4. BZA 9-99 - Wichita Enterprises and Parallax Program Inc.,** pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the off-street parking requirements from 61 spaces to 23 spaces on property zoned "LC" Limited Commercial and legally described as follows:

Reserve "A" and the 20 foot vacated alley adjacent on the North and the Westerly half of the 20 foot vacated alley adjacent on the East, all in Block 1, Krack's Addition to Wichita, Kansas, Sedgwick County, Kansas. Generally located at the Northeast corner of Funston and George Washington Blvd.

**GOOCH:** Reviews staff report and presents slides.

**BACKGROUND:** The applicant is requesting a reduction in the number of required off-street parking spaces they must provide at their alcohol and drug treatment facility located at the northeast corner of Funston and George Washington Drive. The facility has 64 beds. Code requires the applicant to provide 65 spaces. The applicant's site plan indicates they can provide 23 spaces. In the applicant's justification letter, he indicates that the average number of cars at the facility at any one time is 30. Most (95%) of the center's clients are homeless and unemployed and do not own vehicles.

This site was originally developed as a nursing home. Two separate off-street parking areas exist, one on the Funston Street side with 14 spaces and 9 spaces on the George Washington Drive side. On-street parking is permitted on both Funston and George Washington Drive. The way the site is currently developed, there are limited opportunities to provide additional off-street parking. All the land adjoining the site is developed. The one opportunity for additional parking would be to install parking between the two south wings of the building. Approximately 12 additional spaces could



be added, but a new access point to Funston would be needed. That access point would point directly at residences across the street. Lights shining on the homes may be more of a nuisance than on-street parking. The facility has little landscaping.

Adjoining land uses include single-family residences located to the north, east and south. They are zoned "TF-3", Two-family Residence. Self-storage units, zoned "GC", General Commercial, are located to the west of George Washington Blvd. A retail strip center, zoned "LC", Limited Commercial, is located to the north, west of the single-family homes.

The applicant has filed a companion case, CU-517, seeking approval for a "correctional placement residence." This case will be heard by the MAPC on April 15, 1999.

**ADJACENT ZONING AND LAND USE:**

NORTH	"TF-3," Two-family Residential and "LC", Limited Commercial; single-family residences and small retail strip center
SOUTH	"TF-3", Two-family Residential; single-family residence
EAST	"TF-3", Two-family Residential; single-family residence
WEST	"GC", General Commercial; self-storage warehouse

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as the building located on this site is an old nursing home that is being retrofitted to serve as a drug and alcohol rehabilitation facility that serves clients which are mostly (90% according to the applicant) homeless, jobless and car-less.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the applicant indicates that the average number of cars parked at the facilities at any one time is approximately 30. The applicant can provide 23 spaces on-site, leaving approximately seven cars to park on the street. The site is served by George Washington Drive, a frontage road that essentially dead-ends in front of the facility. There is room for most of the seven cars to park on George Washington Drive, minimizing any on-street parking along Funston. Parking could be restricted along Funston if necessary. The Traffic Engineer could monitor this situation.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as the site is being converted from a nursing home to a drug and alcohol treatment center. The only space available for installing additional off-street parking would be to tear up the open space located between two wings of the building. This area is the only grassed area on the site. The only access to this area of the site would require an additional curb cut along Funston. Lights from vehicles using this lot would shine on the residences located south of the site, which may be more objectionable than on-street parking.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as the facility operated as a nursing home for many years with the same square footage and the same number of parking spaces. The current use is similar to the nursing home in that most of the clients do not own a vehicle, therefore parking demand should be similar. Also, this facility has a dead-end frontage road adjacent to the site that has unrestricted parking where overflow parking could park without impacting Funston.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as Parallax has been at this location for some time, and is using a facility that might otherwise sit vacant. Drug and alcohol rehabilitation services are necessary community services, and inasmuch as the majority of this facility's clients do not own or drive cars.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted, subject to the following conditions:

1. All parking spaces, as shown on the site plan submitted with this application, shall be paved, striped and available for use within three months of the date of approval of this variance.
2. No more than 6 persons at any one time who reside in this facility may be permitted to operate vehicles that are parked on the site or in the general vicinity of the site.
3. The resolution authorizing this variance may be declared null and void upon a finding by the Board that the applicant has failed to comply with any of the foregoing conditions.

**FOSTER:** Keith, where is the access point that you referred to that would be pointing directly to the residence across the street?

**GOOCH:** Look at the staff report. It would be approximately right here. It would have to be Funston and therefore when the vehicles leave they would be shining onto these homes located south of the property.

**FOSTER:** No great way to avoid that is there?

**GOOCH:** No.

**FOSTER:** Any question for the staff?

**ALTER:** Keith, this Board used to hear the conditional use applications which are now heard by the other body and are now heard to the City Council for final approval right?

**GOOCH:** Right.

**ALTER:** The MAPC heard it already?

**GOOCH:** Yes.

**ALTER:** And they have approved it?

**GOOCH:** Yes, they have.

**ALTER:** Was the federal fair housing act involved in this? We use to hear some of those cases where some halfway houses and things like that. We did not have the authority not to approve and that we could only limit them within certain levels of our zoning. Is this something that the governing body could actually refuse to do if they chose to?

**GOOCH:** They could refuse it.

**ALTER:** Remember cases that I am talking about?

**DICKGRAFE:** These are all going to be covered under the correctional housing. Which is if you look at the CPO minutes it talks about, apparently, Parallax is going to go ahead and get a license for the correctional housing so they would be monitored that way also.

**ALTER:** Under municipal authority though? I guess I am asking all of staff. We probably have some friends and neighbors to speak on this case and we ought to remember that the purview of this particular Board as regards to this particular case, relates only to parking. We do not have the ability with this Board to turn down the request, to require additional licensing requirements, the actual quality decision in terms of allowing this to go into this site has now been passed along to the governing body, the City Council makes that decision. All that we are being asked to do that should the governing body determine that this is a proper use for that site do we think that the number of parking spaces required is in keeping with the terms of this particular resolution. I want to keep our discussion as we go into this because we have heard a lot of cases like this before. I do not want the people here today to be frustrated with the fact that we do not have the ability to turn this site down. All that we really have the ability to do is listen to the parking requirements should this be approved and then deal with that particular issue. The actual decision goes to the governing body now and that is where those issues need to be heard.

**FOSTER:** Any other questions to staff? Thank you Keith. Is the applicant here to speak? Give us your name and address. I think that you heard Mr. Alter's comments that we have heard a lot of these cases before, as to the background, and to the activities and so forth. We are mainly focussing on the parking.

**MILT FOWLER, EXECUTIVE DIRECTOR OF PARALLAX PROGRAM INC.,** and have been since 1971. We really do not have anything to add to the staff comments other than, we are trying to come into compliance with the correctional housing ordinance that was passed by the city. This is one of the things that we have to go through as part of the conditional use and the parking. Parallax is a drug and alcohol treatment center. It is licensed by the state and funded by the federal government and the State of Kansas and local liquor tax dollars from the City. We have been at this particular residence or this particular facility since April 1994.

**FOSTER:** Could you describe the parking needs. You have how many staff people on the floor at anyone time?

**FOWLER:** We are a twenty-four hour a day residential treatment center, with outpatient services offered. We have a staff of eighteen. That is divided up between three different shifts, just like a hospital would be divided up.

**FOSTER:** How many employees would there be on any one shift?

**FOWLER:** Staff would be in the daytime, Monday thru Friday, 8:00 a.m. to 5:00 p.m., and I think we have somewhere around ten employees at a time.

**FOSTER:** Ten would be your largest. What is the nature of the parking of the other people that come? Are they social service people or family? What necessitates the additional parking?

**FOWLER:** Family members of the people that are in treatment, social service workers, city officials, state officials and sometimes we will have federal officials drop by. Referral agencies that refer to us, SRS people, St. Joseph Hospital, they refer to us quite a bit, some of their staff drops by. The biggest time that we would have anybody there as far as total number of people parking at one time would be when the outpatient program is offered on Tuesday and Thursday evenings at the same time as a residential program. I think I heard the number of cars is around 30 cars at that point was the maximum that we had.

**ALTER:** How do you reconcile that with the request for 23 spaces?

**FOWLER:** The 23 spaces would be utilized along with the parking on Funston Street and there is parking on the George Washington frontage road and whatever that is called there. I do not know the correct name. So there are 23 spots for them to park plus the street in front of our facility and the street to the west of our facility are all parking spaces.

**SWANN:** How many parking spaces do you have now?

**FOWLER:** I think that 23 spaces are what we counted. There are fourteen on the east side of the building and nine on the westside of the building that was existing parking when we moved in.

**FOSTER:** How long has this been operating?

**FOWLER:** At this particular site? April, 1994. Parallax's history goes back to 1971 when I started the program.

**FOSTER:** Is the program any different from 1994, that would necessitate more parking?

**FOWLER:** No. We are treating the same number of people. We are licensed by the State of Kansas for so many beds to be utilized for treatment. That number has not changed. The parking variance is part of the ordinance that we have to have for the correctional housing to take the misdemeanor traffic offenses that we take into treatment. We do treat DUI offenders, possession of marijuana offenders and those kinds of misdemeanor and traffic cases.

**ALTER:** Mr. Chairman, I am having a little trouble following the same line of thinking that you are. This facility has been in existence since 1994, on this property, it basically has been nonconforming with our parking requirements from that point to this. Is that correct?

**FOWLER:** No, I do not think so.

**ALTER:** Should you have had 65 parking spaces without a variance up to this point and time.

**FOWLER:** Not to my knowledge.

**ALTER:** What ripens this issue so that it is different today then it was in 1994, 1995, 1996, and so on.

**FOWLER:** The city ordinance for the correctional housing as I understand it.

**DICKGRAFE:** What apparently has happened is that, and Parallax has always taken DUI offenders as part of a treatment program, however, now they fall into the definition of being a correctional housing unit because they offer in-patient treatment. So they have to comply with all of the requirements of the correctional housing licensing. They very well may have been in compliance before, but, because of the requirements of the correctional housing ordinance, they are required to come here and get a variance to deal with the parking issue.

**COX:** That is correct. Just like Dodge House, for instance if you all remember Dodge House, same situation, this number that is required is based on the number of beds plus one.

**ALTER:** What was the requirement before this licensing issue came up? If you had gone out to inspect this J.R., how many parking spaces would you have counted?

**COX:** Four or five years ago, I don't remember.

**ALTER:** Would they have been incompliant with the old code in general in your opinion?

**COX:** It was a nursing home before, possibly, I think that it was a older nursing home. I think that it had been there for many, many, years probably going by to the 1950's, so very likely.

**ALTER:** Is it likely that they were not in compliance, but non-conforming grandfathered in?

**COX:** Probably, yes.

**ALTER:** Because, I know Mr. Dimascan, who does not even live here anymore he had that facility for a long, long, time.

**DICKGRAFE:** Well, if it still was a nursing home use you would only need one parking space for every five beds, plus one per employee.

**ALTER:** Now this licensing issue is what makes this look like a 65 bed need and that is why they are now coming to ask. I have a question for staff in our other applications like this, Dodge House, and some of those do we generally count on street parking toward trying to get to a maximum number? Haven't we always tried to at least have the facility supply the minimum number of parking spaces needed without impacting the neighbors parking rights?

**GOOCH:** We have used on street parking before, for meeting the five criteria needed to grant a variance. We have stated those in the five criteria, but we don't usually use that towards the number that they can provide or anything, no.

**ALTER:** I am asking, why would staff offer this to us with 23 spaces when it is clear from the report that they need 30?

**DICKGRAFE:** Because you are reducing the off-street parking to 23 you would not reduce the off-street to 30 because they do not have 30 spaces off-street.

**ALTER:** I understand that, you are reaching the conclusion that you want to reach in saying that. I am saying that they need 30 spaces why are we not requiring 30 spaces?

**GOOCH:** I would have to say I did not write this, Dale was involved in this more than I was. They must have taken into account those seven spaces on Funston or George Washington Drive being able to be used by somebody at this facility.

**ALTER:** Did the MAPC consider this issue?

**GOOCH:** No, they did not. Nothing to do with parking.

**COX:** The only reason, possibly, that this was a case that may be a peak that occurs very infrequent.

**ALTER:** Every Tuesday and Thursday according to the applicant.

**COX:** That maybe. All I am saying is that perhaps, in previous talks with Dale Miller and the applicant, that 30 may be a peak number and it may be infrequent. Maybe on Tuesday there may be 25 or 26, or 23. It is a very infrequent peak and that is why.

**GOOCH:** We are also trying to limit the impact to the homes to the south. If they do have to obtain additional seven parking spaces, they are going to have to provide it right in between their buildings. Those lights will be shining directly into those homes to the south, so that is another reason we tried to limit the parking on the street.

**ALTER:** Aren't those houses impacted by the fact that there is constant need for off-street parking? On street parking? It is a regular event as opposed to a once in a while event, it is a least two days a week. Let me come back to staff in a minute. Sir, if there are 64 beds in your facility, generally, how many of those beds on average are full?

**FOWLER:** Since we have made application with the city for this ordinance we have reduced the beds to 58. We run somewhere between 90 to 95 % full-capacity.

**ALTER:** So you are typically going to have over 50 patients on a typical week? Most of them don't drive.

**FOWLER:** Correct. 85% percent by state standards have to be homeless. And we are running somewhere 95% homeless.

**ALTER:** Among your clientele, do they generally have visitors? Are they truly alone in the world, just because they are homeless?

**FOWLER:** Most of the people don't have visitors. They have been dumped by the family members. They have just been put into somewhere and the family says here fix them and then send them back home, and the family rarely shows up for treatment. We are trying to increase that portion of our program to get the families more involved, but right now the percentage probably is maybe around 30% of the families will get involved and stay involved. I think the 30 number that we have talked about, or that I have heard mentioned, is really a peak night. If we had 30 people showing up every night that would

be great for us because we would that much involvement in treatment, but we don't in the family outside people. We are probably closer to the 23 number than we are the 30.

**ALTER:** That is when you have your inpatient and outpatient groups?

**FOWLER:** Combination, yes.

**ALTER:** But if you have over 50 people there and 10 staff, when would be your peak visiting time, after work?

**FOWLER:** We do not allow visiting, only on Sunday afternoons.

**ALTER:** There are no visitors allowed?

**FOWLER:** Correct.

**ALTER:** Family members can not come and see them while they are in treatment?

**FOWLER:** At designated times like we are talking about on those times on Tuesdays and Thursdays when family night is offered.

**ALTER:** Those are the only times?

**FOWLER:** Correct, those are done by appointments.

**ALTER:** And that is the only time that you would get past 23 probably?

**FOWLER:** Correct.

**FOSTER:** It sounds like it is rather spaced out. So there are not as many peak times.

**ALTER:** Mr. Chairman, the only problem that I have with this is, that in listening to these various cases, and frankly, I am sure that Parallax does a great job, I am not trying to be a impediment. We are a very small part of this licensing and conditional use process, I am sure they're having to go before a lot of different bodies. It seems unusual to me, that there are very, very, few cases that are written the way that this is written. Where we know that there is a need for 30 vehicles and we know that it requires on street parking to get to those on a good night. That clearly impacts the neighbors and the neighborhood immediately. We have very few cases offered to us with that limitation. So I am going to yield the floor and come back, but that does cause me some questions.

**GOOCH:** If you would look at this slide, this is looking along George Washington Drive. George Washington is on your left, as I understand from Donna who did the conditional use case, dead ends approximately right here and there are no homes on the westside. So there is on street parking technically, there is availability. I do not know how many parking spaces, but there is quite a few.



**ALTER:** That is almost like a private drive?

**GOOCH:** It is almost, yes.

**ALTER:** And that is where you are counting the extra spaces?

**PITTS:** So what street is it, Keith?

**GOOCH:** That is George Washington Drive. It dead-ends at the north end of their property.

**FOSTER:** So that is a frontage road?

**GOOCH:** Yes.

**ALTER:** So parking there does not impact any of the neighbors or anybody else?

**GOOCH:** No.

**GOLTRY:** It dead-ends as a frontage road and it becomes a wind through there as I recall to the adjoining commercial area.

**ALTER:** This picture makes it a lot clearer.

**ROGERS:** Mr. Fowler, I am confused about the comment in the minutes about the headlights shining on the neighbor's homes. Is it correct that in your back parking lot, that if a car was parked facing south, would that not also be reflecting to the neighbors across the street?

**FOWLER:** One of the recommendations for the application, is that this parking area right here, is in a "L" shape and if you turn and come out, you are coming out right at the residential homes. So your lights for a second will be shining into the residential area and then you turn and go either direction. There is an entrance right here. The parking of the vehicles would be towards our building and not towards the neighborhood.

**FOSTER:** Presumably that was part of the design of the nursing home originally?

**FOWLER:** It looks like it probably was. The MAPC has recommended in part from staff and everybody that we put a fence right here.

**ROGER:** Thank you.

**FOSTER:** Is that part of the recommendation here?

**GOOCH:** That is recommended through the conditional use case.

**FOSTER:** It was part of the conditional use? I think that would be important. Do we have any other questions for the applicant? Thank you, Mr. Fowler. We will call and see if there is anybody else that wishes to speak, was there something else Mr. Fowler? Thank you, Mr. Fowler. Does anyone else wish to speak on case BZA 9-99? I see no one else desiring to speak. We will confine the discussion to the Board. I think several things have been cleared up by the fence recommendation by the MAPC, and the parking along the street, as part of the frontage road. Any other discussion among the members?

**PITTS:** I do not have any comments other than, I guess you can tell when you are over 40 years old, and this has not been operated as a nursing home since 1974.

**FOSTER:** Do I hear a motion?

**MOTION:** ROGERS moves and SWANN seconded that the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report.

**ALTER:** Mr. Chairman, I intend to vote for this resolution, but if this were a different time, this particular Board had heard the conditional use cases as well as the variance cases, I would have a whole lot more trouble with this. We have stretched the limit to allow this particular parking. Again as I said in my first statement that the conditional use decision is actually going to be made at the MAPC and reviewed by the Governing Body and I am going to assume that they are going to make the decision with all of these factors in mind. I think that it would be wrong for us to limit their authority by turning down this parking variance. But, if we were still hearing both ends of the case, I would have a lot more serious trouble with approving this. I think the neighbors are impacted in any case where you know going in that there is an overflow of parking into the neighborhood, on a least a twice a week basis.

**FOSTER:** Are we ready for a motion?

**SIMMERING:** We have a motion.

**FOSTER:** Mr. Roger has made the motion and Swann has seconded the motion any further discussion? I call the question.

**MOTION CARRIES 5-0.**

5. **BZA 10-99 - Southwestern Bell Telephone Company, %Dave Hollis,** pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the front yard setback from 20 feet to 10 feet on property zoned "GC" General Commercial and legally described as follows:

Lot 1, Block 1, 47th Street South. S.O.C. Addition, Wichita, Sedgwick County, Kansas. Generally located at the Southeast corner of 47<sup>th</sup> Street South and Lulu.

**TAPE DID NOT PICK UP THIS CASE SO THIS CASE IS NOT ON TAPE RECORD BUT MY MINUTES HAND-WRITTEN ARE PRESENTED AS WELL AS THE RESOLUTION WHICH WAS APPROVED AND SIGNED BY BICKLEY FOSTER AND DALE MILLER.**

**BACKGROUND:** The applicant is requesting a reduction in the front yard setback from 20 feet to 10 feet on property approved for "GC" General Commercial. The site is a 1.6 acre platted lot, located on the southeast corner of 47<sup>th</sup> Street South and Lulu Avenue, which lies between Hydraulic and I-35 (Kansas Turnpike). Southwestern Bell Telephone Company has an existing covered outdoor storage facility for vehicles and an office building which encroaches into the front yard setback by 10 feet.

The original covered outdoor storage facility was built prior to 1960. It is located ten feet from the front property line, and is within the platted front yard setback of 35 feet. A vacation request of 25 feet of the platted 35 foot front yard setback was approved by the Subdivision Committee of MAPC on March 4, 1999 (V-2166). However, even with the granting of the vacation request, the zoning front yard setback will still remain at 20-foot as required by the "GC" General Commercial district. Thus this request for the Board to grant a variance for a 10 foot front building setback.

This land use surrounding the application area consists of a variety of uses, including a church, a school, several large warehouse facilities, several offices and commercial uses and a residential neighborhood. The property to the south, southeast, and southwest is zoned "LI" Limited Industrial and occupied by several large freight operations and a small office park. Good Shepherd Lutheran Church is located to the east along 47<sup>th</sup> Street South, with Funston Elementary School located in the next block. The property located across Lulu to the west is vacant, but the property beyond the vacant lots is occupied by a restaurant and a hotel. North of 47<sup>th</sup> Street South is a single-family residential neighborhood.

The site is located along 47<sup>th</sup> Street South, a four-lane arterial.

**ADJACENT ZONING AND LAND USE:**

NORTH	"SF-6" Single-Family; single family residences
SOUTH	"LI" Limited Industrial; warehouses
EAST	"GC" General Commercial; Southwestern Bell office and additional storage buildings
WEST	"LI" Limited Industrial; vacant; hotel and restaurant

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as there was some confusion that arose after the building permit was issued on exactly where the street right of way was. The building was built in 1960 and then platted in 1979. At the

time the plat was approved, the platter had included part of the right-of-way in the lot. The plat drawing did not show the right-of-way dedication, however the dedication language was in the platter's text.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the frontage on which the variance is requested is an arterial street and adjacent uses are commercial or institutional uses.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as the building is already built.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as sufficient right-of-way has previously been obtained for foreseeable needs and the sidewalk remains.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch sufficient right-of-way has been obtained and ample light, air and open space exist.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted, subject to the following conditions:

1. The front yard setback is reduced from 20 feet to 10 feet only in the area depicted on the site plan as the area that has already developed. No further encroachment into the front yard setback is permitted without appropriate reviews and approvals.

**FOSTER:** This is a fairly good site. In the front yard setback...

**ALTER:** What brings...

**GOOCH:** Rezoning, they did a vacation and rezoning.

**ALTER:** Grandfathered?

**FOSTER:** Call on the applicant.

**BABAR KHAN AGENT FOR THE APPLICANT:**

**FOSTER:** Are you satisfied with the staff report and the conditions?

**KHAN:** Yes. Any other questions?

**FOSTER:** No. This is your lucky day.

**MOTION:** ALTER moves and PITTS seconded that the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject to the conditions set out in the secretary's report.

**BZA RESOLUTION NO. 10-99**

**WHEREAS**, Southwestern Bell Telephone Company, %Dave Hollis, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to reduce the front yard setback from 20 feet to 10 feet on property zoned "GC" General Commercial and legally described as follows:

Lot 1, Block 1, 47th Street South. S.O.C. Addition, Wichita, Sedgwick County, Kansas. Generally located at the Southeast corner of 47th Street South and Lulu.

**WHEREAS**, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

**WHEREAS**, the Board of Zoning Appeals did, at the meeting of April 27, 1999, consider said application; and

**WHEREAS**, the Board of Zoning Appeals has proper jurisdiction to consider said request for a variance under the provisions of Section 2.12.590.B, Code of the City of Wichita; and

**WHEREAS**, the Board of Zoning Appeals has found that the variance arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owners or the applicant. It is the opinion of staff that this property is unique inasmuch as there was some confusion that arose after the building permit was issued on exactly where the street right of way was. The building was built in 1960 and then platted in 1979. At the time the plat was approved, the platter had included part of the right-of-way in the lot. The plat drawing did not show the right-of-way dedication, however the dedication language was in the platter's text.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents. It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the frontage on which the variance is requested is an arterial street and adjacent uses are commercial or institutional uses.

**WHEREAS**, the Board of Zoning Appeals has found that the strict application of the provisions of the zoning ordinance of which variance is requested will constitute unnecessary hardship upon the property owners represented in the application. It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as the building is already built.

**WHEREAS**, the Board of Zoning Appeals has found that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity or general welfare. It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as sufficient right-of-way has previously been obtained for foreseeable needs and the sidewalk remains.

**WHEREAS**, the Board of Zoning Appeals has found that the granting of the variance desired will not be opposed to the general spirit and intent of the zoning ordinance. It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch sufficient right-of-way has been obtained and ample light, air and open space exist.

**WHEREAS**, each of the five conditions required by Section 2.12.590.B, Code of the City of Wichita, to be present before a variance can be granted has been found to exist.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Zoning Appeals of the City of Wichita that this request be approved for a variance to reduce the front yard setback from 20 feet to 10 feet on property zoned "GC" General Commercial and legally described as follows:

Lot 1, Block 1, 47th Street South. S.O.C. Addition, Wichita, Sedgwick County, Kansas. Generally located at the Southeast corner of 47th Street South and Lulu.

subject to the following condition:

1. The front yard setback is reduced from 20 feet to 10 feet only in the area depicted on the site plan as that area that has already developed. No further encroachment into the front yard setback is permitted without appropriate reviews and approvals.

**MOTION APPROVED 5-0.**

6. **BZA 12-99 - Khalil Abdallah**, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to allow reduction in the number of required parking spaces from 12 to 9 on property zoned "LC" Limited Commercial and legally described as follows:

Lot 1, Block A, Schweiter's 11th Addition, Sedgwick County, Kansas.  
Generally located at the Northeast corner of Harry and George Washington  
Boulevard.

**GOOCH:** Reviews staff report and presents slides.

**BACKGROUND:** City Council approved a "Conditional Use" permit (CU-498) to allow vehicle sales on this location, the northeast corner of Harry and George Washington Boulevard. The applicant operates an upholstery repair shop from the existing building found at this location. Through his business dealings with customers and also with car dealerships the applicant acquires vehicles. He cleans and repairs these vehicles, and then places them on this lot for sale. Under the terms of the "Conditional Use", the applicant can display no more than three vehicles at any one time. His site plan depicts nine off-street parking spaces located on the north side of the building with the vehicle display area located on the south side. Access to the site is off of George Washington Boulevard.

The Unified Zoning Code requires auto businesses to provide customer parking at the rate of two spaces for the first 10,000 square feet and one space per each additional 10,000 square feet of lot area used for vehicle sales, display or storage purposes and one space per 500 square feet of building area for employee parking. The applicant has approximately 494 square feet of space for vehicle sales, display and storage which will require a total of two spaces for customer and employee parking. The building (3,500 total square feet) will be used as a vehicle sales office (500 square feet) and as an office for the upholstery business (1,500 square feet) will require an additional 9 parking spaces (one for the car sales office and eight for the upholstery business). There is also 1,500 square feet used for storage of the upholstery business which would require one additional parking space. Therefore, this site has a requirement for 12 off-street spaces for employee and customer parking. The applicant can provide only 9 spaces.

There is an apartment project located to the north of the application area. It is out understanding that the application explored the possibility of leasing spaces from the apartment, however they did not have any excess spaces. Across George Washington Boulevard, to the west, is a restaurant. Residential properties are located north of the restaurant. A bottling plant is located southwest of the site. Commercial uses are located south and east of the site.

**ADJACENT ZONING AND LAND USE:**

NORTH	"GO", General Office; apartment complex
SOUTH	"LC", Limited Commercial; commercial development
EAST	"LC", Limited Commercial; commercial development
WEST	"LC", Limited Commercial; commercial development

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as this site is an old fire station location that is small to begin with and trapezoidal in shape; it is hemmed in by other development so there are not any expansion possibilities; and the applicant's somewhat unique combination of uses (upholstery and small scale car sales). It is a small site that is developed with a building located basically in the middle of the site, eliminating any room to re-design or re-stripe the parking area to meet the code. The parking requirements tend to work against a small-scale use like this. The two uses have operated together (illegally) with no apparent need additional parking. Further the building has overhead doors. The code does not permit parking spaces to be located in front of overhead doors.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the applicant's business is not a high volume traffic generation use. Reducing by three the number of off-street spaces should not negatively impact the apartment complex to the north or the commercial strip center located to the east.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as it is the unlikely combination of uses – car sales, office, storage and service commercial uses – on such small a site that creates the need for this variance.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch as this is a low traffic generation use.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as a low volume traffic generation use.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted, subject to the following conditions:

1. The parking reduction from 12 to nine spaces shall be installed in substantial conformance with the site plan submitted with this variance request, and shall only apply to vehicle sales that is accessory to another auto related use.
2. The parking area on the north and the display area on the south shall be paved, striped and maintained in accordance with approved site plan within three months of the approval of this request.
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any or the foregoing conditions.



**FOSTER:** Questions for Keith?

**ALTER:** I noticed that this was CU 4-98, when was this approved?

**GOOCH:** I think that it was early March when it was approved.

**ALTER:** Of this year?

**GOOCH:** Yes.

**ALTER:** So it sat on the books for almost a year, before it came up?

**GOOCH:** For the BZA?

**ALTER:** Yes.

**GOOCH:** No, it sat on for maybe a week or two.

**ALTER:** My question is if it is CU-498. Was it filed in April of 98 and just held?

**GOOCH:** No, it is CU-498. Four hundred and ninety eight. They do not number the conditional use the same way the BZA does. We will start to soon I think but not right now.

**ALTER:** So that 498 does not mean that it was filed April of 1998?

**GOOCH:** No.

**PITTS:** I have a question on the jurisdiction. I am wondering why this case went before CPO Northeast Council number 1?

**GOOCH:** I think with the revised CPO jurisdiction it is. CPO 1 had control over it. I can go and get you a map if you want. I am not real familiar with them yet. The exact line I think it is north of Harry is where it cuts off for CPO 1.

**PITTS:** I do not want you to stop what you are doing to go and get a map, but I would like to see it after this is over.

**GOOCH:** I can go get the map while the applicant is talking.

**FOSTER:** Any other questions for Keith? Thank you. Is the applicant present?

**TIM MOORE, 200 W. DOUGLAS:** I am here on behalf of Khalil and Denise Abdallah, who are the co-owners of the facility Magic Touch Car Upholstery. I have with me here today, Denise Abdallah. A little history of this site is probably in order. It is an odd little site as some members of the planning commission mentioned when we were before them

on the conditional use permit. My clients bought this property seven years ago. Prior to his purchasing it, it had been vacated for two years and it had been vandalized, and infested with rats, and it is an odd shaped little building that formerly had been a fire station. It, as I mentioned, was a hard thing to know what to do with it. He made substantial renovations and improvements to the property and turned it into a car upholstery business. People would bring their cars and he would fix them up. He quickly learned being in that business that it is a difficult and highly seasonal business. Particular during the winter months, there really is not any work to be done. In order to accent his business, and in order to stay into operation he wanted to offer vehicles for sale that he had purchased and added value through his existing upholstery business at the site. He applied for a license and got all the permits and the inspections that he needed and began to offer vehicles for sale there. Unfortunately, he did not understand, that he was only zoned for vehicle sales on the inside rather than outside display of vehicles. So, for two years he displayed vehicles outside of the building and offered them for sale. No more than two or three at a time because that was the limit of number of vehicles that he was able to work on and offer for sale at any one time. The sales were simply incidental to his business. Eventually, Central Inspection made him aware that he was in violation. So he immediately filed for a conditional use permit to allow outside sales, which brought us before the planning commission, which ultimately approved the conditional use permit. However, we still have the parking problem to contend with. According to the staff's calculations we need a total of 12 spaces and looking at the site plan, if I can do this correctly. If you look at the back of the secretary's report, you will see the site plan on the back of that. If you take a look, not counting of course the three spots for display up in front of the building which will be paved along Harry Street, you can really only fit nine spaces back in the back for employee and customer parking. We tried to take options as Keith mentioned on the apartment building spaces to the north, but they did not have sufficient space, and the strip mall to the east, but that was not permissible as well. The best argument frankly that I can give you to support the staff's conclusion that the five necessary criteria are met is the fact that for two years he was selling cars incidental to his upholstery business. Outdoor display here at the site, there were no problems with congestion traffic, no problem with parking and no customer complaints or residence or neighborhood complaints of any kind were received or documented. I think that speaks volumes as to the fact that this allowing the parking spaces to go down from 12 to 9, will not create any substantial change in the use of this site. The client tells me that the parking lot has never been full even when in the past two years they were operating the business in order to sell vehicles as well. The reason for that is quite obvious, the cars that he is selling there, are incidental to his business. At any particular time he might have 0 cars for sale or 1 or 2 for sale, or at the maximum 3 which is the maximum that is allowed by the conditional use permit. Given the nature of the site and given the small size, the building, the former fire station sits right in the middle of the lot. In fact, the building intrudes upon the setback in a way that the building that wasn't a fire station would not have been allowed to do. There really is not sufficient parking. There is parking available on George Washington Drive, that is the frontage road and of course we are not counting that to meet the parking requirements, but the past experience is probably the best guide. Two years of operation as a business and having vehicle sales displayed on the outside for sale, and no problem with parking whatsoever. I would urge

you to accept the staff's recommendation that this be approved and taking us down 3 spaces from 12 to 9.

**FOSTER:** Mr. Moore, how many employees are working at this site?

**MOORE:** Besides Mr. Abdallah and his wife, there is one other employee.

**FOSTER:** So in essence than you would have even at most you would have 3 employee parking and 3 for sale and then 3 left for clients?

**MOORE:** It has never been full. That is correct.

**FOSTER:** Any other questions of Mr. Moore? Anyone to speak to this matter? I will confine the discussion to the Board. Sounds like he is making the best use of a difficult site there.

**MOTION:** ALTER moves and ROGERS seconded that the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted subject tot he conditions set out in the secretary's report.

**MOTION CARRIES 5-0.**

7. **BZA – 13-99 -John E. Baker**, pursuant to Section 2.12.590.B, Code of the City of Wichita, requests a variance to permit the expansion of a legal nonconforming use by more than 30% on property zoned "SF-6" Single-family Residential and legally described as follows:

Lots 37, 39, 41, 43, 45 and 47, Block 1, Post & Christy's College Crest Addition to Wichita, Kansas, Sedgwick County, Kansas. Generally located at the Southwest corner of 26th Street North and Hillside.

**GOOCH:** Presents staff report and slides.

**BACKGROUND:** The applicant operates a nonconforming drywall and construction business office on property located at the southeast corner of 26th Street North and Hillside. The applicant indicates he has been at this location for over 15 years. When he purchased the site, the location had been used as a service station. The applicant converted the service station to his construction business office. (The code permits nonconforming uses to be changed to a new use provided the new use is the same character or is a less intensive use than the nonconforming use.) Recently, when the applicant attempted to obtain a building permit to expand his office and indoor storage area, he discovered that the site was still zoned "SF-6", Single-family Residential which does not permit an office. "Office" uses are first permitted in the "NO", Neighborhood Office district. Rather than recommend that the applicant request "NO" zoning at this

location, staff recommended that he seek this variance. There is not any other office zoning in the immediate area, and surrounding areas are residential uses.

The applicant intends to add on to the existing building and brick the exterior so that he can have more indoor area for his office and an expanded area in which to his house his equipment. The site is surrounded by a chain link fence, and there is substantial deciduous vegetation growing on the south fence. The applicant currently has vehicles and construction materials stored outside. Outside storage is not a permitted use in either the "SF-6" or "NO" zoning districts, and it is staff's understanding that the applicant intends to move these items indoors if this variance is approved.

All properties adjoining this site are zoned "SF-6", Single-family Residential and are developed with single-family residences or a church. The property north of 26th Street is screened from view of the application area by a solid row of evergreen trees.

Access to the site is off of Hillside Avenue which is designated by the "2020 Transportation Plan" as a 4-lane arterial. Public services are available to the site. With a remodel project of this size (an addition of 1,769 square feet to a 2,493 square foot building), the applicant should be advised that landscaping consistent with the Landscape Ordinance will be triggered and a landscape plan will need to be submitted and approved.

#### **ADJACENT ZONING AND LAND USE:**

NORTH	"SF-6", Single-family Residential; Single-family residence
SOUTH	"SF-6", Single-family Residential; Single-family residence
EAST	"SF-6", Single-family Residential; Single-family residence
WEST	"SF-6", Single-family Residential; Single-family residence and church

**UNIQUENESS:** It is the opinion of staff that this property is unique inasmuch as the site is an 18,000 square foot lot containing a nonconforming use that has been in operation for the last 15 years.

**ADJACENT PROPERTY:** It is the opinion of staff that the granting of the variance requested will not adversely affect the rights of adjacent property owners, inasmuch as the applicant could continue to use the site as a nonconforming use. He has been at this site for 15 years. Approval of this variance will allow the applicant to improve the quality of the existing building and would allow him to have enough room to store equipment indoors that is currently stored outside. Improving the current building and moving the equipment inside will improve the neighborhood in general.

**HARDSHIP:** It is the opinion of staff that the strict application of the provisions of the zoning regulations may constitute an unnecessary hardship upon the applicant, inasmuch as the applicant is trying to improve his businesses appearance and expand the facility so that he can store equipment inside. Without approval, the applicant can not expand the structure housing his nonconforming use.

**PUBLIC INTEREST:** It is the opinion of staff that the requested variance would not adversely affect the public interest, inasmuch it is in the public's interest to preserve and promote businesses that are willing to make an investment to improve their facilities. This applicant is willing to make a significant investment to upgrade his property.

**SPIRIT AND INTENT:** It is the opinion of staff that the granting of the variance requested would not be opposed to the general spirit and intent of the zoning regulations, inasmuch as the uses had been here for 15 years. The purpose of the code is to promote compatible land uses. Apparently this use is operated in such a fashion that it is compatible with surrounding neighboring uses.

**RECOMMENDATION:** Should the Board determine that all five conditions necessary to the granting of the variance can be found to exist, then it is the recommendation of the Secretary that the variance be granted, subject to the following conditions:

1. The existing building and its expansion shall be bricked and the expansion shall be completed as indicated by the attached building site plan. The remodeling project shall be completed with one year.
2. No outside storage is permitted.
3. The east and south sides shall be screened with code approved fencing materials or landscaping material providing year-round screening or a combination of those materials along the .
3. The resolution authorizing this variance may be declared null and void upon findings by the Board that the applicant has failed to comply with any of the foregoing conditions.

**ALTER:** Keith, can you please show me the first couple of slides? Where is the addition going on?

**KEITH:** I think the addition is going east behind the building then. Office will go to the north and then the new building would go east of this site.

**ALTER:** Will that building be torn down or will that just be an addition.

**FOSTER:** Let's ask the applicant.

**PITTS:** I would like to tie down the location. We are shown here that this is the southwest corner of 26<sup>th</sup> Street north and Hillside.

**GOOCH:** Correct. Southeast corner.

**JOHN E BAKER, 2641 N. BLUFF:**

**FOSTER:** Why don't you describe to us what your proposal is?

**BAKER:** We propose to put an addition on to the back of this building and we are going back 30 feet. We are coming to the south 16 feet and we are going back north 16 feet. I have a plan on this, if you would like to see this.

**ALTER:** I just wanted to see how it fit on the property.

**FOSTER:** There is a lot of outdoor material there.

**BAKER:** That is a trailer, some stuff we brought in off the job site. A couple of wheel barrels.

**ALTER:** I noticed in the staff report Mr. Baker, that it says that all of that material which is stored outside will be stored inside after your addition is complete.

**BAKER:** That is correct. There will be no outside storage at all.

**ALTER:** That would be a definite improvement to the property.

**FOSTER:** That is what I was concerned about.

**BAKER:** We think that this building will help to cleanup this area.

**ALTER:** That is a good goal.

**PITTS:** It is your understanding that this property has been single-family residential since, even when it was a filling station?

**BAKER:** We bought it and we thought that it was commercial. It has been a station there probably 20 years before we bought it and we have been there 15 years.

**ALTER:** Probably non-conforming when they rezoned it SF-6. It was probably already pre-existing.

**PITTS:** Who rezoned it though?

**ALTER:** If it is a legal non-conforming use what they are telling you is that was there even before that zoning existed so that it was grandfathered in way before those houses were even there. That is what makes it a legal non-conforming.

**FOSTER:** Do we have any questions for Mr. Baker? I have some for Keith. If you will just standby Mr. Baker and hold on we will get back to you here.

**BAKER:** Thank you.

**FOSTER:** This is legal non-conforming. What are the provisions of the zoning regulations to allow an expansion of a legal non-conforming? Are there certain limits to how much?

**GOOCH:** No larger than 30%.

**FOSTER:** And he is staying within the 30%?

**GOOCH:** No, he is going above the 30%. That's why you have the variance.

**ALTER:** If he was staying within 30% he could do it as his right and not ask anybody's permission, just get a building permit.

**FOSTER:** So this just says to increase it beyond 30%. But how much more is it?

**GOOCH:** I think it is on the bottom of page two, the last paragraph of the background section.

**FOSTER:** I have the square footage. But, in other words is this 40 or 50%?

**GOOCH:** I think it is more than 50%.

**ALTER:** If you just do the math it is 65 to 70%.

**FOSTER:** The reason that I am saying this is the recommendation in the report, 1,2,3 on the bottom doesn't really tell how much the variance would be. That is the point that I am making. It seems to me that we should have some limit on it so that we know how much is being requested.

**GOOCH:** It is tied to the site plan. The approval will be tied to the site plan and the applicant will have to develop it as the site plan shows.

**ALTER:** And also the landscape plan approved by your department.

**GOOCH:** Correct.

**ALTER:** As long as he is maintaining his setback limitations it is more than 30% we do not really care how big it is as long as he fitting on the property.

**PITTS:** It is a little less than 41% increase.

**FOSTER:** Keith, just reassure me on one other thing that Mr. Alter brought up. In other words, what did the MAPC say on the conditional use about the outside storage?

**GOOCH:** There is no conditional use. There is no outside storage permitted.

**FOSTER:** Because of the zone that it is in?

**GOOCH:** Correct.

**FOSTER:** So, no outside storage.

**GOOCH:** He will have to clean this entire site up and put it inside the building.

**FOSTER:** Is that satisfactory to you Mr. Baker?

**BAKER:** Yes.

**FOSTER:** Any other questions for Mr. Baker or staff?

**PITTS:** Keith, if he were interested at some future point and time in rezoning this site could it be easier to get it rezoned with this non-conforming use then it would be to get it rezoned today?

**GOOCH:** I would say that either way that it is a problem, due to the fact that you look at the surrounding land uses and the surrounding uses. It is all surrounded by residential, we would not want to strip out Hillside anymore, there is already some areas striped out. I would have to guess that staff would not support it.

**ALTER:** If you and I sat on the zoning body and were asked to rezone this, we would have a terrible problem.

**FOSTER:** Any other questions of staff or the applicant? Thank you Mr. Baker. I will confine the discussion to the Board. I need to ask is anybody else to speak to this? Not seeing anyone else than I will define this discussion to the Board.

**PITTS:** Mr. Chairman, I think that it is perhaps somewhat unfortunate that this property has been existing so long as a non-conforming. I am going to support the motion. I think the improvements that are ready to be made to it are definite improvements to not only the property to the neighborhood itself and I am in favor of it.

**ALTER:** Do not leave yet Mr. Baker.

**FOSTER:** It has been my experience, legal non-conforming uses rarely go away on their own. If you can get them approved it is a better step than just waiting for it to disappear.

**MOTION:** ROGERS moves and PITTS seconded that the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in Section 2.12.590 (b) of the City Code as necessary for the granting of a



variance have been found to exist and that the variance be granted subject tot he conditions set out in the secretary's report number 1-4.

**MOTION CARRIES 5-0.**

**ALTER:** You can now go, Mr. Baker, and good luck to you.

**FOSTER:** We do have an opportunity to report from OCI but J.R. has left. Did he leave a report with anybody or is there anything else that we need to know?

**ALTER:** To have an agenda this long and get through in this period of time I would have never had guessed.

**PITTS:** I think the chair should be complimented.

**MEETING ADJOURNED.**